IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No.

RICHARD HARRIS,

Petitioner,

v.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

RICHARD HARRIS,
Pro se,
Cathcart Road,
Gwynedd Valley, Pa.

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Richard Harris, of Gwynedd Valley, Penna., the petitioner in the Court below, prays that a writ of certiorari issue to review the decision of the UNITED STATES COURT OF CLAIMS entered June 17th, 1960.

Opinion Below

The decision of the COURT OF CLAIMS granted a motion of counsel for defendant for dismissal by said court based on the provisions of USCode 2501 making mandatory the dismissal of "EVERY" cause of Action that is not instituted within six years after the same first accrued. USCode 2501 recited no exception to this ruling. The order of dismissal of petitioner's claim was entered June 18th. 1960.

Questions Presented

In its order of dismissal, the COURT OF CLAIMS specified no definite date at which the Court deemed the provisions of USCode 2501 became effective, and petitioner concludes said date should be Nov. 6th. 1959 when the Accounting office denied petitioner's claim.

The instant case relates solely to the failure of defendant to reclassify petitioner, as promised, together with the salary differential attendant thereto, commensurate with the more important duties assigned to him.

Petitioner worked as a civilian employee of the defendant from November 21st. 1942 to September 10th. 1946 as a purchase analyst at the Central District Headquarters, Army Air Force, Detroit, Mich. during which period of time he caused to be returned to the defendant many millions of dollars in excess charges exacted by corporations on war contracts. When petitioner desired to return to his home and family in Pennsylvania, he was urged by his superiors to remain because his unit had recovered more money for the government at less cost than any other unit. His superiors, as an inducement, assured him that they would reclassify his status with the added compensation which he had earned and to which he was entitled. These assurances never materialized; hence the suit.

The inducements and promises made to plaintiff and continuing over a period of years and ending in a final decision of the General Accounting Office filed Nov. 6th. 1959, are all set forth at length in plaintiff's statement of claim and these allegations are neither denied or controverted by the defendant and therefore must be admitted to be true, thereby creating an equitable estoppel barring defendant's plea under USCode 2501 as a defense. Likewise, the two cases cited by the defendant in support of its Motion to

Dismiss are not germaine to the issues raised in that these two cases, to-wit: *Love* v. *U.S.* 122 Ct Clms 144, 146 (1952) and *Levin* v. *U.S.* 133 Ct Clms 774 (1954), the crux of each of these respective claims arises out of a discharge from employment. In one case the Court determined the discharge legal, and in the second case the Court decreed the plaintiff had no right to enter suit. Both claims had been opposed on the plea of the Statute of Limitations, yet the Court entered its respective decree.

The foregoing cases cited by defendant, however, are far afield of plaintiff's action who was not discharged.

As further argument, the petitioner respectfully submits that defendant's Motion to Dismiss based on USCode 2501 is improvidently filed in that said Motion fails to fall within the exceptions enumerated in Ct Clms Rule 16B.

The petitioner further contends that petitioner's action essentially is an equitable action and defendant attempts to apply the equitable rule of laches to the Statute of Limitations.

In *O'Brien* v. *Wheelock*, 184 US 450, the Court said:

> "Laches consists of two elements, inexcusable delay in commencing suit and prejudice resulting to the defendant from such delay. Its existence depends upon the equities of the case, and not upon the lapse of time."

In this instant case the petitioner contends that had his claim been repudiated by the defendant and the petitioner then failed to act, laches could and would apply. On the contrary, petitioner's claim was never repudiated by the defendant, nor does the record disclose any disputation of petitioner's allegations of the inducements and promises made to him which kept this case alive until denied by The General Accounting Office on November 6th, 1959 on a charge of neglect not justly attributable to the petitioner.

"Laches will not be imposed on one who has been justifiably ignorant "of the facts creating his right of cause of action, and who therefore had failed to assert it".

Phillips J. Alexander v. *Phillips Petroleum Co.* 130 F.2nd. 503, 10th CI (1942).

Statement of the Case

After continuous attempts to obtain the compensation due and promised he was, in 1949, shunted to Congress on the advice that such compensatory reimbursement required special legislation, and, pursuant to this advice, he made such application, and likewise was held in suspense for a period of years until 1956 at which time he was advised that such a bill, even if introduced, would be subject to jostling about Congress and never would be acted upon. Therefore, on February 22nd. 1956 the petitioner filed a complaint with the President to which he received no reply, but on November 6th. 1959 (presumably in answer to same) he did receive a notice to the effect that his claim was denied by the General Accounting Office on the conclusion that it was filed ten years after the date the debt first accrued. Within two months after the receipt of this notice, the petitioner, on Jan. 11th. 1960, entered suit in the COURT OF CLAIMS to obtain a judicial review of the ruling and the Court's consideration of the claim.

The petitioner did not sleep on his rights but had used all due diligence to obtain the compensation justly due him and promised to him and to which he received no decisive answer until November 6th. 1959 denying his claim on a technical reason. The petitioner contends that he should not be penalized for conditions not within his control. Petitioner concedes the great merits of the Statute of Limitations, but argues that it is a Statute of repose rather than a penalty and that the intendment of Congress in the enactment of USCode 2501 was not to circumvent petitioner's

constitutional right of his day in Court, but to set a time when security from suit could be assured a defendant. This Statute of repose is not operative in matters where a plaintiff is not cognizant of his rights and has been led by fraud or other devious means to defer his action. In support of this conclusion, the petitioner cites the decree of Your Honorable Court entered in *Glus* v. *Brooklyn Eastern District Ry. Terminal* US 231 (1959) wherein the Court determines that this Code is inapplicable where the litigant is detered by promises of compensation, or settlement of his claim.

Reasons for Granting the Writ

1. The indisputable righteousness of the claim.
2. Justice requires it.
3. The record, as stated in plaintiff's detailed claim.

Conclusion

By reason of the summary dismissal of plaintiff's claim by the Court of Claims, the plaintiff is denied his right to justice and remedies for injuries sustained and deprived of his day in Court.

Wherefore, with full faith and credit in the decree of Your Honorable Court that "Justice must satisfy the appearance of Justice" (*In re Murcheson*, 349 U.S. 133) plaintiff prays Your Honorable Court for the allowance of a Writ of Certiorari to issue in the above entitled case directed to the Court of Claims.

Respectfully submitted,

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(1542-0)